

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SERIOUS USA, INC; SERIOUS IP, INC.;
AND DXPDD, LLC, :
:
Plaintiffs, :
:
v. :
:
CD DIGITAL CARD; CD WORKS; : Civ. Action No. 08-cv-4808 (GBD) (AJP)
DISCMAKERS; IMX SOLUTIONS, INC; :
INFINITE MARKETING INC; INGRAM :
MICRO INC; L&M OPTICAL DISC, LLC; :
MICROVISION DEVELOPMENT, INC.; :
ONEDISC.COM, INC.; and SONARUS :
CORPORATION, :
:
Defendants. :
:
----- X

APPLICATION FOR DEFAULT JUDGMENT

Plaintiffs Serious USA, Inc. (“Serious”); Serious IP, Inc. (“Serious IP”); and DXPDD, LLC (“DXPDD”) (collectively “Plaintiffs”), hereby submit their application for default judgment (the “Application”) against Defendant Infinite Marketing, Inc. (“Infinite”) pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, and Rule 55.2(b) of the Local Rules of this Court. In support hereof, Plaintiffs state the following:

1. On May 22, 2008, Plaintiffs filed the Summons and Complaint alleging infringement of certain patents of which Plaintiffs are the owners. *See* Docket Item no. 1.
2. The Summons and Complaint were personally served on Infinite on May 27, 2008. *See* Docket Item no. 9.

3. Despite an extension and conversations with then counsel regarding a proposed settlement of the matter, Infinite failed to answer or otherwise move. *See* Declaration of Karine Louis, dated July 23, 2008 (“Louis Decl.”), ¶¶ 6-8; Ex. A.

4. Infinite has since claimed that it is in the process of going out of business. Louis Decl. ¶ 9; Ex. B.

5. On July 22, 2008, the Clerk of this Court executed a Certificate of Default for Infinite which is being filed simultaneously with this Application.

6. Upon default, allegations of the Complaint pertaining to liability are deemed true and admitted. *See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir.1992) (“a party’s default is deemed to constitute a concession of all well pleaded allegations of liability”). *See also Century 21 Real Estate LLC v. Paramount Home Sales, Inc.*, No. 06-cv-2861 (FB)(JMA), 2007 WL 2403397, at *3 (E.D.N.Y. Aug. 20, 2007) (same); *Burch v. Nyarko*, No. 06 Civ. 7022 (LAP) (GWG), 2007 WL 2191615, at *1 (S.D.N.Y. July 31, 2007) (same).

7. The default establishes Infinite’s liability to Serious IP for its claims against Infinite as set forth in the Complaint. In short, the default establishes that:

- Infinite has infringed United States Design Patent No. D503,404, U.S. Patent Nos. 6,510,124; 6,762,988; and 7,308,696 (collectively the “Patents-in-Suit”) by the manufacture, use, sale, importation and/or offer for sale of the Video Business Card pursuant to 35 U.S.C. § 271;
- Infinite has had notice of the Patents-in-Suit as of January 10, 2007 and has acted with reckless disregard as to its infringement, which has been and continues to be willful; and

- Infinite willfully and wantonly infringed the Patents-in-Suit in deliberate and intentional disregard of Serious IP's rights.

8. As a result of the default, Infinite's liability is established as to the following counts of the Complaint: I - Infringement of United States Design Patent No. D503,404; ¶¶ 44-46; II - Infringement of United States Patent No. 6,510,124; ¶¶ 72-74; III - Infringement of United States Patent No. 6,762,988; ¶¶ 100-102; and IV - Infringement of United States Patent No. 7,308, 696; ¶¶ 128-130.

Plaintiffs therefore seek a declaration that Infinite has infringed, is infringing, has induced and is inducing, and has contributed and is contributing to the infringement of United States Design Patent No. D503,124; United States Patent Nos. 6,510,124; 6,762,988; and 7,308,696; and

A permanent injunction enjoining Infinite, their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from manufacturing, purchasing, importing, exporting, distributing, circulating, selling, offering for sale, advertising, promoting or displaying all Video Business Card products.

Dated: New York, New York
July 23, 2008

DREIER LLP

By: /s/Karine Louis
Seth H. Ostrow (SO 9605)
Arianna Frankl (AF 7764)
Karine Louis (KL 6652)

499 Park Avenue
New York, New York 10022
Telephone: (212) 328-6100
Facsimile: (212) 328-6101

Attorneys for Plaintiffs Serious USA, Inc.;
Serious IP, Inc.; and DXPDD, LLC

373221

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SERIOUS USA, INC.; SERIOUS IP, INC.;
and DXPDD, LLC,

Plaintiffs,

v.

CD DIGITAL CARD; CD WORKS;
DISCMAKERS; IMX SOLUTIONS, INC;
INFINITE MARKETING INC; INGRAM
MICRO INC; L&M OPTICAL DISC, LLC;
MICROVISION DEVELOPMENT, INC.;
ONEDISC.COM, INC.; and SONARUS
CORPORATION,

Defendants.
-----X

Civil Action No. 08-CV-4808 (GBD) (AJP)

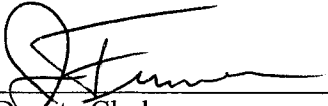
**CLERK'S CERTIFICATE FOR
DEFAULT JUDGMENT**

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on May 22, 2008 with the filing of a summons and complaint, a copy of the summons and complaint was personally served on defendant Infinite Marketing, Inc. ("Infinite") by serving Bonnie Boe, Manager on May 27, 2008, who agreed to accept service on behalf of Infinite, and proof of such service thereof was filed on June 6, 2008. I further certify that the docket entries indicate that Infinite has not filed an answer or otherwise moved with respect to the complaint herein. The default of Infinite is hereby noted.

Dated: New York, New York
July ~~22~~, 2008

J. MICHAEL MCMAHON

Clerk of the Court

By: 
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SERIOUS USA, INC; SERIOUS IP, INC.;
AND DXPDD, LLC, :

Plaintiffs, :

v. : Civ. Action No. 08-cv-4808 (GBD) (AJP)

CD DIGITAL CARD; CD WORKS; : **[PROPOSED] ORDER GRANTING**
DISCMAKERS; IMX SOLUTIONS, INC; : **DEFAULT JUDGMENT AGAINST**
INFINITE MARKETING INC; INGRAM : **INFINITE MARKETING, INC.**
MICRO INC; L&M OPTICAL DISC, LLC; :
MICROVISION DEVELOPMENT, INC.; :
ONEDISC.COM, INC.; and SONARUS :
CORPORATION, :

Defendants. :
----- x

WHEREAS, Plaintiffs Serious USA, Inc.; Serious IP, Inc.; and DXPDD, LLC
("Plaintiffs") have filed an Application to this Court for Default Judgment pursuant to Rule 55(b)
of the Federal Rules of Civil Procedure, and Rule 55.2(b) of the local rules of this court;

WHEREAS, the Clerk of this Court executed a Certificate of Default Judgment against
Defendant Infinite Marketing, Inc. ("Infinite") on July 22, 2008;

WHEREAS, based upon the Court's review of Plaintiffs' Application and declaration
submitted in connection with the same and upon the record of proceedings in this case;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendant Infinite has infringed, is infringing, has induced and is inducing, and
has contributed and is contributing to the infringement of United States Design Patent No.
D503,124; United States Patent Nos. 6,510,124; 6,762,988; and 7,308,696;

2. Defendant Infinite, their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them are permanently enjoined from manufacturing, purchasing, importing, exporting, distributing, circulating, selling, offering for sale, advertising, promoting or displaying all Video Business Card products.

IT IS SO ORDERED this ____ day of July 2008.

Andrew J. Peck
United States Magistrate District Judge

373536